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RIGHT TO RESTRAIN THE RIGHT OF FREE SPEECH OR A FREE PRESS WHEN NECESSARY TO MAKE EFFECTIVE THE TERMS OF AN INJUNCTION RESTRAINING A BOYCOTT.

Before expressing our opinion on the decision in the contempt proceedings before Mr. Justice Wright of the Supreme Court of the District of Columbia in the case of Buck Stove & Range Co. v. American Federation of Labor, 36 Wash. L. Rep. 822, we have awaited the decision in the court of appeals on the question of the validity of the injunction, which was rendered on March 11, 1909, affirming the decree of the lower court. This to our mind concludes also the contempt proceedings, for, if the injunction was valid, the defendants are clearly subject to the penalty of the law for violating it.

The exact issues in this case extracted from a mass of evidence are not difficult to state. The plaintiff stove company refused to grant its metal polishers a nine hour day. The said metal polishers thereupon called a "strike," but being few in numbers, the strike was futile to compel the plaintiff to submit to their terms. They then essayed to make use of that more effective weapon, the boycott. Right here, however, the plaintiff interfered and requested and was granted an injunction restraining the local union and the American Federation of Labor from carrying into effect such boycott, alleging that the boycott was an illegal conspiracy to injure their business. One of the prohibitions of the injunction which was intended to prevent the carrying into effect of the conspiracy or boycott was to the effect that defendants Gompers and others should not in any manner publish or declare the plaintiff's firm to be "unfair." Here is where the defendants attacked the validity of the injunction, alleging that such a mandate was void as depriving them of their constitutional right to publish or speak freely on any subject they might choose.

The court of appeals has sustained the terms of this injunction. This action of the court is quite correct on principle provided that the premise be correct, to-wit, that a boycott is an illegal conspiracy. Granting that the boycott was illegal it was certainly not improper for the court to enjoin the attempt to put it into effect if it be shown that the injury to property rights, about to be inflicted, was irreparable and that there was no adequate remedy at law. Following logically, therefore, to our final conclusion, if the boycott was illegal, and the court had power to restrain it, it necessarily follows that whatever prohibition is necessary to make the writ of injunction effective is within the power of the court to make, even if the prohibition affects the constitutional right to print or speak freely.

This is not the case of an injunction prohibiting an individual from writing or speaking on any subject he pleases. There would be no authority for such an injunction. This is simply the case of injunction prohibiting an alleged band of conspirators from carrying out the object of their conspiracy, to-wit, the establishment of a boycott. If the only means of making effective the boycott is by writing or speaking, even the exercise of such sacred rights may be restrained, so far only, however, as is necessary to prevent the boycott itself from becoming effective.

The court of appeals recognizes clearly this distinction,—indeed, even more clearly than did Justice Wright, himself, who, unfortunately, allowed himself to be swayed by too much personal feeling against the defendants. The court of appeals in accordance with the rule, as we have stated it, modified the terms of the injunction by eliminating therefrom the restriction upon the defendants from "mentioning, writing or referring to the business of the plaintiffs."

The modification of the decree of the lower court as indicated was quite proper. No injunction can thus unnecessarily abridge the right of a free press or free speech. The extent of the restrictions which were proper to be imposed was limited to those "references" by writing or speaking which were efficacious in establishing the boycott, the thing sought to be prevented.

NOTES OF IMPORTANT DECISIONS.

EVIDENCE—PREVIOUS ACCIDENTS AT SAME POINT AS PROVING THAT DEFECT EXISTED.—Many courts have to our mind completely missed the mark in holding evidence of previous accidents or mishaps inadmissible. For that reason we desire to call attention to the recent case of Chicago & Great Western Railway v. McDonough, 161 Fed. 657, where the contrary rule was announced.

The principal case was an action for injuries sustained through a boiler explosion, where the gravamen of the charge was that the defendant had negligently failed to exercise reasonable care in maintaining the boiler in reasonably safe condition.

The decision of the court was to the effect that evidence of recurring explosions, not otherwise explained, occurring in the course of its prior use, when the conditions were substantially the same, was admissible as bearing upon its tendency to become impaired by the particular use to which it was subjected, the defendant's knowledge of that tendency, and the precautions which, in the exercise of reasonable or ordinary care should have been taken thereafter in inspecting and testing it to determine whether it was in reasonably safe condition for use.

This is an accurate statement of the rule which is founded on reason and principle and is supported by the great weight of authority. It is surprising, however, how many courts stumble over it and often make themselves ridiculous by managing to get on both sides of it without apparently noticing the blunder, as did the Supreme Court of Colorado in the case of Diamond Rubber Co. v. Harryman, 92 Pac. 922, holding that evidence of similar injuries resulting from tripping over an iron pipe on a sidewalk was not admissible to show notice, or that it was a dangerous device. In Colorado Mortgage & Investment Co. v. Reese, 21 Colo. 435, the court had held such evidence admissible "to show that an elevator door was open because of the defective condition of the lock."

The authorities which hold a contrary doctrine in the main blindly follow and rely on the Massachusetts cases, which exclude such testimony and which are based on the early case of Collins v. Dorchester, 6 Cush. 396. This decision has been severely criticised by other courts and its correctness doubted even by the court which first declared it. Bemis v. Temple, 162 Mass. 342.

THE RIGHT OF AN INSURANCE AGENT TO WAIVE THE PROVISION IN AN APPLICATION FOR INSURANCE, THAT THE POLICY SHALL NOT BE IN FORCE UNTIL THE RECEIPT OF THE FIRST PREMIUM.

On account of the vast proportions assumed by the life insurance business in this country, and the ever increasing competition existing between the agents and solicitors of the various companies in their efforts to write new business, the courts are very frequently called upon to decide questions concerning life insurance policies and applications, which are the results of the efforts of over zealous agents to increase their company's business.

Many agents make a practice of giving an applicant for insurance, a certain length of time, in which to pay the initial premium, while others, when the applicant is a store keeper or retailer, often "trade out" the first premium, and account to the company out of their own funds. Other companies take the applicant's notes for the first premium, and there are numerous cases where the agent being indebted to the applicant, agrees to receive a credit upon his individual account as the first payment on the policy. These cases on account of the frequent negligence of the local agents in accounting for the premium, and in delivering the policy, where there is a death, are fruitful sources of insurance litigation, and present interesting legal questions upon which the courts of the several states are

not entirely in accord. Many of these cases also present the question as to the agent's authority to waive the payment of the initial premium, where the application makes such payment a condition precedent to the issuing of the policy.

The case of Sheldon v. Connecticut etc., Ins. Co.,[1] is an early one upon the question of waiver. In that case there was a declaration signed by the applicant, following the application for insurance, but not made a part of the policy, where the applicant stated that he agreed that the insurance proposed should not be binding until the premium, which was payable partly in cash and partly by note, should be received by the company or their accredited agent. It was held that parol evidence was admissible for the purpose of showing a waiver of such prepayment; that defendant's agent verbally agreed that the policy of insurance should take effect immediately upon approval of the application, and that the premium note might be made, and the cash premium paid, at some future time, so the company was held liable on the policy.

In a Michigan case[2] it was held that where the agents of an insurance company, acting for themselves, advanced the money for the premium to the company, and took the note of the insured for the amount as their own, and negotiated the same, that the company could not dispute its liability on the ground that the premium had not been actually paid; also that the actual manual delivery of the policy was not necessary.

In Kerlin v. National Accident Assn.,[3] the certificate contained the provision that "this certificate shall not take effect unless payment is made or secured as agreed," yet the court held as is concisely stated in the syllabus that "where, at the time of the execution of an application for accident insurance, the person seeking insurance exhibited, offered and tendered to the company's soliciting and collecting agent, the full amount of the first annual premium for the policy, and the agent was owing the insured a sum less than the amount of the premium, and the agent told the insured to pay him, the agent, the excess of the premium over the amount owing by the agent to the insured, and he, the agent, would pay to the company the amount owing by the agent to the insured, and the insured, acting in entire good faith, paid the sum in excess of the debt owing by the agent to him, and relied, in good faith, upon the agent's statement, that he, the agent, would pay to the insurance company the remainder of the premium; this, in law, would be a sufficient payment of the premium by the insured, and the insured is not bound to see that the agent pays the money to the company, until he has notice to the contrary."

In a New Jersey case,[4] it appeared that in March, 1855 and before and after that time, one G. W. Breck was a local agent at Bath, New York, of a foreign insurance company, with authority to make survey, receive proposals for insurance, and to receive premiums upon risks accepted by the company, but was not authorized to make insurance or issue policies. One Halleck applied to such agent for insurance, and was told what the insurance would be, which the applicant then offered to pay, and the agent said that he would consider it as paid, but would leave it with the plaintiff, who was a banker and with whom the agent kept an account, till the policy arrived, when he, Breck, would call and get the money. Afterwards and before the policy was delivered, and before the premium was paid the property burned. One of the provisions of the contract was that no insurance should be binding until the premium was paid. The company so far as appears, had no notice of the arrangement with the agent. The company refused to pay the insurance, because among

(1) Shelson v. Conn., etc., Ins. Co., 25 Conn. 207, 65 Am. Dec. 565.

(2) Home Ins. Co. v. Curtis, 32 Mich. 402.

(3) Kerlin v. National Acc. Assn., 8 Ind. App. 628.

(4) Halleck v. Commercial Ins. Co., 26 N. J. 268.

other reasons, the premium had not been paid. The court held that the company was liable. In the course of the opinion the court said: "The case shows that the plaintiff, when he made his application, offered Breck the premium, who said that he would consider it as paid, but would leave it with the plaintiff, who was his banker, till the policy arrived, when he would call and get it. Would it have made the payment more real if the plaintiff had handed Breck the money, and Breck had deposited it with his banker? * * * * The money was, in legal effect, paid to Breck, and by him placed in deposit. It was, in contemplation of law, an actual payment to the company, as much as if Breck had transmitted the money, as well as the application, to the company. But if not an actual payment the defendants are estopped from saying that it is not."

In Yonge v. Equitable Life Assur. Soc.,[5] a policy of life insurance was issued under a contract with the local agent whereby it was substantially agreed that the agent should pay the first quarter's premium and take the applicant's note for the same. The policy was mailed from the home office July 28th, 1885, and received by the local agent August 5th, 1885, but was never actually delivered into the possession of the applicant, who was taken sick August 6th, and died September 9th, 1885. It was held as between the applicant and the company, that the policy became binding when placed in the mail July 28th, 1885, and, if not then, certainly when it reached the hands of the agent August 5th, 1885.

In Mississippi Valley Life Ins. Co. v. Neyland[6] it was held that a general agent of an insurance company, whose business it was to solicit applications for insurance and receive the first premiums, had the right to waive the payment in money, and, in lieu thereof, take a promissory note, or undertake to make the payment himself, notwithstanding a recital in the policy that it shall not be binding until the cash part of the first premium is actually paid in money.

The general rule as to the liability of an insurance company where the agent agrees to look after the payment of the initial premium, is thus stated by a prominent text book writer on insurance:[7] "If the agent be authorized to receive the premium, an agreement between the applicant and the agent that the latter will be responsible to the company for the amount and hold the applicant as his personal debtor therefor, is a waiver of the stipulation in the policy that it shall not be binding until the premium is received by the company, or its accredited agent."[8]

In Longe v. North British, etc., Ins. Co.[9] it is held that a provision in a policy making actual payment of premium a condition of its validity may be waived by the issuing agent so far as to give time for such payment, notwithstanding a prohibition in the policy of any waivers of conditions by agents, where the established course of dealing between the parties has been for the agent to extend such credits, he becoming the accepted debtor of the company for the premiums and the assured becoming his debtor therefor. It appears to be well settled that the binding effect of a policy does not depend upon its manual possession by the assured. To hold otherwise would enable an unprincipled agent to defraud an applicant, after the applicant has fulfilled all of the conditions of the application and the policy had been issued by the home office of the company. The test would seem to be, has the applicant fulfilled all of the conditions precedent to the issuing of the policy? If he has, then

(5) Yonge v. Equitable Life Assur. Soc., 30 Fed. 902.

(6) Mississippi Valley Life Ins. Co. v. Neyland, 9 Bush (Ky.), 430. See also Chickering v. Globe, etc. Ins. Co., 116 Mass. 321; 2 May, Insurance (4th Ed.), sec. 360. Also 1 May, Ins. (4th Ed.), sec. 134.

(7) 2 May, Insurance (4th Ed.), sec. 360.

(8) On the question of the power of an agent to waive the conditons of payment of the first premium see authorities collected in Kerlin v. National Acc. Assn., 8 Ind. App. 628.

(9) Long v. North British, etc., Ins. Co., 137 Pa. St. 335, 20 Atl. 1014, 21 Am. St. 879.

the mailing of the policy from the home office is a constructive delivery to the applicant.[10]

On the question as to the power of the agent to waive the initial payment of the premium, where the terms of the policy specifically state that the same shall not be binding and in force until such payment is made, there is some conflict in the decided cases, and a strong line of authority exists to the effect that an agent cannot so waive such payment. In Continental Life Ins. Co. v. Willets,[11] the defendant in error, who was plaintiff below, brought action upon a policy of insurance upon the life of her husband in her favor. The issuance of the policy by the company and its transmission to their general agents at Detroit, in whose hands it was at the time of the death of the defendant in error's husband, were not in dispute. The application for a policy contained the following clause, immediately preceding the signature of the applicant: "It is hereby declared * * * also that the policy of insurance hereby applied for shall not be binding upon the company until the amount of all premium or premiums, as stated therein, which shall be due or overdue, shall be received by said company or by some person authorized to receive the same, and during the lifetime of the party herein insured." It was claimed by the plaintiff in error that the first premium upon the policy had never been paid by the insured, and consequently the defendant in error had never become entitled to the policy, or to maintain action upon it. The defendant claimed on the other hand, that all of the first premium except $12 had been paid in a promissory note against Wilkey, delivered to and accepted by Gray, who the plaintiff claimed had authority to receive the same as payment and with whom plaintiff also claimed there was an understanding express or implied for some credit for the remaining $12. Gray, it appeared, was a sub-agent, employed by the general agent at Detroit as solicitor to deliver policies and collect premiums. There was no dispute that when the policy in question was sent on by the company to their general agents it was delivered to Gray to collect the premium and then to deliver the policy to the insured; that he then called upon Wilkey, and, on the latter expressing his inability to pay, he took from him the Wilkey note. The case was given to the jury by the circuit judge upon the theory that under the undisputed facts of the case Gray had authority to make the arrangement claimed by the plaintiff to have been made, and that the question for the jury, therefore, was whether he did make it or not. The charge was: "If the note for $42 given in evidence was delivered to, and accepted by, Gray as payment in part of that portion of the premium payable down, and there was an understanding, express or implied between Gray and defendant's husband that the residue of said portion of the premium should be paid to said Gray at some future time, then Gray at once became indebted to his principals, Tenwinkle and McCune for such premium, and they to the defendant, and as between plaintiff and defendant said premium was paid and the policy delivered to her." There was judgment for the defendant in error. Upon appeal the judgment was reversed. The Supreme Court by Cooley, J., said: "If Gray could bind the company by such an agreement, it must be either because expressly authorized, or because the course of business of the defendant was such as to warrant an implication of authority upon which third persons would be authorized to act. A sub-agent, employed by the agent of an insurance company to solicit applications for insurance, collect premiums and deliver policies has certainly by virtue of such employment no general authority to give credit or receive anything but cash in payment. This is too plain to require the

(10) Phoenix Assur. Co. v. McArthur, 116 Ala., 659, 22 South. 903, 67 Am. St. 154; Triple Link, etc., Assn. v. Williams, 121 Ala. 138, 26 South. 19, 77 Am. St. 34. See 1 May, Insurance (4th Ed.), sec. 60.

(11) Continental Life Ins. Co. v. Willets, 24 Mich. 268.

citation of authorities. * * * To support the theory of the plaintiff, there should have been some evidence showing or tending to show, that the sub-agent was allowed at his option, to substitute a personal liability of his own to the company in the place of the money which he was to collect as premium the company being content to look to him as its debtor for any amount which he saw fit to arrange otherwise than by actual payment in cash, with the parties applying for insurance. * * * The company appears to have taken care to provide against any implication of any such understanding, requiring, as they appear to have done an express stipulation by the applicant for insurance that the policy should not have force until the premium was actually received. It is very true that if he saw fit to pay over to his principals the premium upon a policy they did not inquire whether he had actually received it or not, nor had they any occasion to. If a collecting agent, for any reason of his own, pays to his principal the amount of the demand which he has not collected, it would be a violent inference from that fact, that he was authorized to discharge other demands without payment. The implication, on the other hand would be, that the principal insisted upon strict payments always, and did not consent in any case to leave matters open to await the result of private arrangements between the debtor and the agent, with which the principal was not concerned, and which he did not care to inquire into."

In Northern Assur Co. v. Grand View Bld'g. Assn.[12] it was held that where waiver is relied upon the plaintiff must show that the company, with knowledge of the facts that occasioned the forfeiture, dispensed with the observance of the condition. Where the waiver relied upon is the act of an agent it must be shown either that the agent had express authority from the company to make the waiver, or that the company subsequently, with knowledge of the facts, ratified the action of the agent.

In a federal case[13] where the policy provided that its conditions should not be waived unless the waiver was indorsed upon the policy or attached thereto, and also contained a clause that as to any personal property it should be void if the property became encumbered by a chattel mortgage, it was held that such conditions were not waived by an indorsement making the loss payable to two persons named, who were in fact mortgagees, as their interests might appear, but which did not contain any reference to the mortgage nor show that the insurer had any knowledge of the existence of a mortgage upon the personal property.

In an Indiana case[14] the policy contained a memorandum, that "agents of this company will receive premiums when due, but are not authorized, in any case, to make, alter or discharge contracts. The court in holding that the agent could not alter the contract of insurance by a waiver of a forfeiture said: "We think, under such a policy as that in suit, the agent has no authority to receive the premium after it becomes due, and thereby alter the legal effect of the contract as to forfeiture in case of non-payment when due. The agent's powers in this respect are limited, and of this the insured has notice."

In Russell v. Prudential Ins. Co.[15] a written application for life insurance provided that the application should become a part of the contract for insurance, and that the policy should be accepted subject to the conditions and agreements contained in the application, and that it should not take effect until it was issued and delivered by the company, and the first premium paid thereon in full. The provision was carried

(12) Northern Assur. Co. v. Grand View Bldg. Assn., 183 U. S. 308, 22 Sup. Ct. 133, 46 L. Ed. 213.

(13) Atlas Reduction Co. v. New Zealand Ins. Co., 121 Fed. 929.

(14) Franklin Life Insurance Co. v. Sefton. Admr., et al, 53 Ind. 380. In this case it was also held that the custom and usage of the company could not be shown so as to control the terms of the contract between the parties.

(15) Russell v. Prudential Ins. Co., 176 N. Y. 178, 68 N. E. 252.

into the policy. Held, that the applicant must be presumed in the absence of fraud, to have read or have read to him the application and to have known that the policy could not take effect until the premium was paid, so that the policy would not be binding until such payment, and was chargeable with the notice that the agent could not without express authority waive such payment.

The case of Neff v. Metropolitan Life Ins. Co.[16] is a well considered one upon the question of the right of an agent to waive the payment of the initial fee as required in the application. In that case there was an arrangement between the insured and the company's agent which provided that the agent "would settle with the company" and that the insured "could pay him (the agent) later." The application for insurance was made on November 29th, 1901, and was forwarded to the home office, where it was received December 6th, 1901. The policy of insurance was written and signed at the home office on December 11th and mailed to one of the company's superintendents in a city near the home of the insured. It was then sent to the company's agent in the city where the applicant resided and was received there on December 16. The applicant became sick in the night of December 14th and died early in the morning of the 15th. The policy was never delivered to the applicant or to his wife the beneficiary, and nothing was paid upon the premium due under the terms of the policy. It was claimed that the agreement between the applicant and the company's agent, in which the agent agreed to settle with the company, constituted a payment to and bound the company. In holding adversely to this contention, the Appellate Court, speaking by Comstock, Chief Justice, said: "As between the insured and the defendant company there was no extension of time of payment of the premium. No money passed between the local agent and the insured. The letter from the superintendent at Ft. Wayne to the local agent at Bluffton, transmitting the policy directed him to 'deliver at once, and account for the premium to us on Wednesday.' There is nothing in this to indicate a credit or waiver of payment of the first premium, or knowledge of an agreement as to either. There is no evidence that Beil (the agent) charged himself with any amount or accounted for any sum to the company. * * * The terms of the contract required actual payment of the premium to, and its acceptance, by the company during the lifetime and good health of the insured. * * * There could be no presumption in the absence of evidence that the principal had instructed an agent to deliver a policy without the payment of the first premium, or while the applicant was sick, in plain violation of the stipulations of the policy and of the application."

The fact that a policy of insurance, containing the stipulation that it shall not be binding upon the insurer until the first premium is paid, is delivered to the insured without such payment being made, would be important in determining the intention of the parties, and the company would be estopped from setting up such stipulation as a defense. Such is the holding of the best considered cases upon the subject.

A New York case thus states the holding:[17] "It has been thought that the fact, that the insurer delivered to the insured the written contract, as a consummated agreement between them, and did not then exact present payment of the premium as a necessary precedent to delivery, was too plainly in contradiction with the condition for prepayment, for it to be supposed that it was meant by the insurer, or supposed by either party that it was intended to make that condition a potent part of the contract." The question of the intention of the parties would be one for the jury under the instructions of the court.

SUMNER KENNER.

Huntington, Indiana.

(16) Neff v. Metropolitan Life Ins. Co., 39 Ind. App. 250.

(17) Van Schoick v. Niagara Fire Ins. Co., 68 N. Y. 434.

PAYMENT—RECOVERY OF EXCESSIVE TELEPHONE CHARGES.

ILLINOIS GLASS CO. v. CHICAGO TELEPHONE CO.

Supreme Court of Illinois, June 18, 1908.

A customer of a telephone company cannot recover excessive charges for services voluntarily paid without fraud, mistake of fact, or other ground for annulling the contract.

CARTWRIGHT, C. J.: On January 4, 1889, an ordinance of the city of Chicago was passed authorizing the appellee, the Chicago Telephone Company, to construct, maintain, and operate its lines of telephone wires in said city for 20 years. It was required to file with its acceptance of the ordinance a schedule showing the rates then charged for telephone service, and was prohibited from increasing to its existing or future subscribers the rates so established. The appellee accepted the ordinance and filed its schedule of rates showing that it charged $125 per year for a business telephone within the territory where the office of the appellant, the Illinois Glass Company, was located. Appellant contracted with appellee for a business telephone at that rate and used it for many years, up to October 11, 1897. The telephone so contracted for was known as the "grounded line," and was the kind in use when the ordinance was passed. With the increase of wires and disturbing influences the telephone grew less efficient, and did not give satisfactory service by reason of humming, spluttering, and hissing noises, which made it difficult to carry on a conversation. An improved service, known as the "metallic circuit," was devised, which obviated the objection to the grounded line, and, when the credit man of appellant complained to appellee of the service, he was told that, if appellant would procure the improved telephone equipment, it would have better service, and that such improved telephone would cost $50 a year additional, or $175 a year. The credit man said that the price was high, but was informed that the service would be better, and he consulted with a general officer of appellant about the advisability of making the contract. He was authorized to do so, and on October 11, 1897, a contract was executed by which appellant was to pay $175 a year, quarterly in advance. The improved telephone was installed in the office of appellant, and appellee rendered bills quarterly in advance for the service, which were paid for the ensuing five years. The amount so paid was $209.97 in excess of the rate fixed by the ordinance, and on July 17, 1903, appellant brought this suit in the superior court of Cook county against appellee to recover that amount. The declaration was in the common counts, to which the defendant pleaded that general issue and the five-year statute of limitations. There was a trial by jury, and at the conclusion of the plaintiff's evidence the court, on motion of the defendant, directed a verdict in defendant's favor. A verdict was returned under that direction, and the plaintiff's motion for a new trial was overruled and judgment was entered against it for costs. The Branch Appellate Court for the First District affirmed the judgment on appeal and granted a certificate of importance, under which this further appeal was prosecuted.

All the evidence in the case was introduced by the plaintiff, and it was thereby proved that the contract was entered into by it deliberately, after negotiations and with full knowledge of all the facts and conditions; that it was performed by the defendant according to its terms; and that the payments made under it, quarterly, for the period of five years, were made without any objection or protest or manifestation of unwillingness to pay the amount agreed to be paid. In order to be relieved from its contract and to recover back a portion of the moneys paid, the plaintiff assumed the burden of establishing, by the evidence, facts from which the law would draw the conclusion that the defendant had received money which in justice belonged to the plaintiff and ought to be returned. There was neither fraud, misrepresentation, nor mistake of fact, and it is not claimed that the payments were made upon a consideration which subsequently failed, but it is insisted that the fact of overpayment alone was sufficient to sustain the action. The fact of overpayment was established, and is not disputed. The defendant was bound to furnish any improved service or equipment adopted by it to its customers within the territory where the plaintiff's office was located at the rate of $125 a year. People v. Chicago Telephone Co., 220 Ill. 238, 77 N. E. 245. Counsel do not seriously contend that the mere fact of overpayment would authorize a recovery as between private individuals or between individuals and municipal corporations or public officials collecting taxes or generally in other relations, but the burden of their argument is that a distinction has been observed by other courts, and should be observed by this court, where the payment is made to a corporation rendering public service, such as a railroad or telephone corporation. Such a distinction has never been made in any case in this court, and the real question here is whether such a

distinction ought to be recognized and a recovery be permitted merely because of a payment in excess of that which defendant had a legal right to demand.

It has been a universally recognized rule that money voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal. It has been deemed necessary not only to show that the claim asserted was unlawful, but also that the payment was not voluntary, that there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion. The ancient doctrine of duress of person, and later of goods, has been much relaxed, and extended so as to admit of compulsion of business and circumstances, and perhaps a telephone corporation having a system in general operation and connected with customers and other business houses might reasonably influence a business house to make an unwilling payment of an amount illegally demanded, which would make the payment compulsory. The telephone has become an instrument of such necessity in business houses that a denial of its advantages would amount to a destruction of the business. In the case of County of La Salle v. Simmons, 5 Gilman, 513, a payment made for business reasons was declared by the court to be, in law and fact, a compulsory payment. The county commissioners had power to grant ferry licenses and to require payment therefor not exceeding $100. They gave notice that they would grant a certain ferry license to the person who would donate the largest amount to the county, and the plaintiff, who had previously kept the ferry, offered $500, which was accepted. It was held that he was compelled, by the force of circumstances over which he had no control, to advance a large sum of money to protect his business, and that he could recover it back. In this case there was undoubted inequality of situation between the parties, but there was no evidence tending to show that the plaintiff was in any manner overcome by any necessity amounting to compulsion. The proposition for an improved service at an increased price was presented and accepted without objection, and there was entire acquiescence on the part of the plaintiff for a term of years thereafter.

From the nature of the question no very precise rules can be laid down as to what will constitute a compulsory payment, but the general principles are illustrated by a number of cases. The principles were applied in two cases between the city of Chicago and owners of property who had paid illegal special assessment. In Bradford v. City of Chicago, 25 Ill. 411, it was held that a property owner could recover an assessment for the purpose of opening a street where the assessment was void and payment was made to a collector who had a warrant in his hands authorizing him to levy upon and sell the goods and chattels of the property owner. On the other hand, in Elston v. City of Chicago, 40 Ill. 514, 89 Am. Dec. 361, where the assessment was void, but the payment was made when there was no precept or execution in the hands of an officer by which the collection of the assessment could be enforced, it was held that the payment was not compulsory. The doctrine of that case, which is adhered to by practically all courts, is that a payment made with full knowledge of all the facts and circumstances and in ignorance only of legal rights cannot be recovered back. In order to render a payment compulsory, such a pressure must be brought to bear upon the person paying as to interfere with the free enjoyment of his rights of person or property, and the compulsion must furnish the motive for the payment sought to be avoided. Proof that one party is under no legal obligation to pay the money and that the other has no right to receive it is of no consequence unless the payment was compulsory, in the sense of depriving the one making the payment of the exercise of his free will. The rules were applied as between shipper and common carrier in the case of Chicago & Alton Railroad Co. v. Chicago, Vermillion & Wilmington Coal Co., 79 Ill. 121, where the coal company had no other outlet for its coal, and the court said it was a case of life or death with the coal company, and it was bound to accede to any terms the railroad company might impose. In that case there was a controlling necessity arising from the circumstances under which the money was demanded and paid, and it was held that the shipper could recover from the railroad company the excess of freight over that which it was entitled to exact. There was no hint that there is any peculiar rule or test as between a public service corporation and one for whom the service is rendered. In Pemberton v. Williams, 87 Ill. 15, the assignee of a purchaser of land who had contracted to sell the land to another was compelled to pay the original vendor more than was due, in order to get a deed to satisfy his vendee, and made the payment under protest. That was a case of business necessity, and it was held to be a fair question for the jury whether the payment was not involuntary and made under a sort of moral duress. In Gannaway v. Bar-

ricklow, 203 Ill. 410, 67 N. E. 825, an administrator paid money falsely represented to be for back taxes of his intestate, and it was contended that the tax was voluntarily paid. The court said that a tax voluntarily paid, where there was no mistake of fact, could not be recovered back, but that the payment was made in that case on account of fraud and imposition, where no tax was ever levied or extended, and was not voluntary. In City of Chicago v. Northwestern Mutual Life Ins. Co., 218 Ill. 40, 75 N. E. 803, 1 L. R. A. (N. S.) 770, an owner of property was adjudged to have rightfully recovered from the city of Chicago water rates unlawfully exacted and paid under protest to prevent the city from carrying out a threat to shut off the water supply. The payment was deemed compulsory. In Yates v. Royal Ins. Co., 200 Ill. 202, 65 N. E. 726, it was held that, although a statute imposing a tax was unconstitutional and the tax illegal, it could not be recovered back if it was paid voluntarily. It was considered of no importance that the tax was illegal where it was paid under a mistake as to legal rights but with knowledge of all the facts. Those cases clearly show the rules of law respecting voluntary and compulsory payments and their application to different conditions. They were applied to a common carrier, and to the city occupying the same position as a public service corporation in supplying water to the inhabitants of the city—a public service performed by the city in the exercise of a private and not a governmental function. Wagner v. City of Rock Island, 146 Ill. 139, 34 N. E. 545, 21 L. R. A. 519. It was not thought that a mere overpayment to a railroad company carrying coal nor to the city for supplying water would authorize a recovery, but it was assumed that there must be an added element of compulsion.

Much effort is made to show that the rule forbidding a recovery of illegal taxes voluntarily paid rests upon peculiar grounds distinguishing cases of that kind from this one, but, if that were so, it would be of no avail, since the rule is not confined to tax cases. However, we are not able to see any valid ground for declaring one rule in tax cases and a different rule in other cases. Counsel say that tax cases are distinguished by the facts that taxes are essential to the existence of the government; that the taxpayer necessarily derives some benefit from the tax that he has paid; that the collector of the tax acts as an agent of the government, and, if the tax is recovered back, the public funds are diminished. These propositions are all true, but we do not see how they affect the question. The government must be supplied with revenue, but that fact affords no justification for injury to a citizen or unjust or illegal exactions. The plaintiff derived some benefit from the money which it paid to the defendant—in fact, all the benefit which was expected or that the contract provided for—and we do not see that it makes any difference whether money is received by an agent for his principal or by the principal himself. If a tax is recovered back, the public funds are diminished; but we do not see any ground for saying that the law would make the recovery of money voluntarily paid to a tax official impossible and at the same time make a recovery easy and certain if the money voluntarily paid was for telephone service. Not only has no distinction of that kind been made by this court, but we do not find among the cases cited by counsel any which contain no element of compulsion. The circumstances of different cases are so diverse and the nature of the question is such that, as before stated, no very precise rules can be laid down which will fit every case. Ordinarily protest is the best evidence of compulsion or unwillingness to pay, and it is usually expected where the payment is made to one who has a right to make terms with the payor, but, where protest would be useless, it is superfluous. Examples are to be found in cases cited by counsel where a railroad company fixes its own rates and goods are tendered to an agent who has no authority to make any change in such rates and where a protest would be entirely useless. Compulsion may appear from the circumstances and not from any expression of unwillingness or protest against a payment; but that has no effect on the rule that a payment which is voluntary, and not compulsory, cannot be recovered back. Plaintiff was chargeable with knowledge that the defendant could not string its wires in the streets of the city and carry on its business without a license or grant from the city, which must be by ordinance, and the license was given by ordinance, upon terms and conditions for its enjoyment, and the ordinance is a local law of the city. Although the defendant could not legally require payment of more than $125 per year for the business telephone, and the plaintiff was not legally bound to pay more, a larger sum was voluntarily paid without fraud, mistake of fact, or other ground for annulling the contract. The court did not err in directing a verdict.

NOTE.—*Payment of Excessive Charges to Common Carrier or Other Public Utility.*—The principal case goes upon the theory that payment made to a quasi-public corporation of an illegal charge for service is no more recoverable from it than from any other where the payment is made under claim of right and there is full knowledge on the part of the payor, and incidentally, it is concluded, that a claim of right may stand in the teeth of a competent regulation expressly forbidding such to be made. In other words, in the principal case the telephone company accepted an ordinance agreeing to charge $125.00 per year for a telephone and plaintiff paying more than that without protest is forbidden to recover the excess.

The principal case says there was in prior decision in its state "no hint that there is any peculiar rule or test as between a public service corporation and one for whom the service is rendered." In California there seems to be, however, a statement of a rule which is broad enough to differentiate a payment to such a corporation from an ordinary payment, taking it that such a corporation is denying or withdrawing a service it can be compelled by mandamus to supply. Thus it is said in Trower v. City and County of San Francisco, 92 Pac. 1025: "When an illegal demand is made against the person or property of an individual, which can be enforced only by a judgment therefor in an action at law wherein he can contest its legality, or if made under a threatened sale of his property and he can contest the validity of the proceedings whenever an attempt is made to disturb his possession, and he pays the claim on demand rather than be subjected to such action or have his property sold, such payment is voluntary, to the extent that it cannot be recovered in an action therefor." Then the court goes on to instance as involuntary a payment made on an illegal demand, under color of authority, and its enforcement operating as an immediate restraint on the exercise of an undoubted right or privilege. And such seems to me the necessary view taken by the U. S. Supreme Court in the case of Western U. T. Co. v. Call Pub. Co., 181 U. S. 92, 45 L. Ed. 765. In that case the Call Publishing Co. sued the Telegraph Co. for the amounts paid for service in unlawful discrimination in rates between it and its competitor publishing another newspaper in the same city. It is true the suit was brought under a statute of Nebraska, giving the right to sue for damages because of such discrimination, but the federal supreme court decided the question independently of such statute in favor of plaintiff as a common law right—"the alleged efficacy of the Nebraska statute in respect to discriminations" not coming into the case, but merely a right to recover from a public service corporation for excess in dissimilarity in charges where there was similarity in service. As to a portion of the excess paid by plaintiff, the facts were well known, but the case in no way distinguished between what was paid in ignorance of the discrimination and that paid after knowledge obtained thereof. Justice Brewer, in his opinion, speaks of the right to recover as based on "inherent justice" and certainly it should not be permitted to a public service corporation to say that it was so far a benefit to the individual citizens of, and to, a community that it might exercise the privilege of strict occupancy and the right of eminent domain and then say it is depriving no one of a material right to take away or deny service for any appreciable length of time, while the justice of a demand by it may be litigated.

As an instructive case showing that in a contract on which payments had been made for years, these might be recovered back so far as excessive, from a public service corporation, see Armour Packing Co. v. Edison Electric, etc., Co., 100 N. Y. S. 605. It happened in that case that the plaintiff only sued for those excesses charged and paid before it became aware it was discriminated and therefore the court found itself only called on to decide, that where there was such ignorance the action lay. The statement of facts, however, in the principal case seems to show a like ignorance on the part of the Glass Co. and that it afterwards came into possession of facts showing discrimination. Therefore it may be said that the Packing Co. case is opposed to the principal case.

The Call Publishing Co. and Packing Co. cases are interesting as showing or seeming to show that a statute forbidding discrimination is not a necessary predicate to maintaining a right of action, but at all events it would appear wise, in all statutory regulation of this subject, that there should be express declaration that whether the fact of discrimination is known at the time or not, or whether protest is made or not, a right of action should not only lie for recovery of the excess, but a penalty should be recoverable against whomsoever a discriminative rate is charged—or at least counsel fees ought to be awarded the plaintiff, where he brings suit and recovers.

What is alluded to in a general way in the principal case about relaxation of the doctrine of duress should rather be called an extension. Thus the supreme court of Missouri adopts the statement made in 22 Am. & Eng. Encyc. Law, p. 613, that "courts have shown a tendency in later decisions to extend the doctrine of the earlier common law with regard to compulsory payment and they do not now attempt to lay down any definite and exact rule of universal application by which to determine whether a payment is voluntary or compulsory." Accordingly that court held that under an ordinance providing for turning off water where consumers refuse to pay the prescribed charge and such consumer is dependent upon its water supply to do business that payment of an illegal charge under such circumstances is compulsory and the excessive part may be recovered. Brewing Assn. v. St. Louis, 140 Mo. l. c. 423. It is sufficient also to allege that a business is dependent on the city furnishing water without additionally alleging that an ordinance provides that refusal to pay will result in water being turned off. Brewing Co. v. St. Louis, 187 Mo. 367.

N. C. COLLIER.

JETSAM AND FLOTSAM.

LINCOLN THE LAWYER.

In 1856, there was published only sixteen volumes of the Illinois supreme court reports. There are now two hundred and thirty-five volumes of these reports. Previous to that time, and up to 1860—during all the period that Abraham Lincoln was a practicing lawyer—

causes were tried on principle rather than precedent. Those who followed Judge David Davis as he went from county to county holding court on the "Old Eighth Circuit," when the published reports were so few and the jurisprudence of Illinois was in its formative state, were naturally compelled in the trial of causes to base their arguments to the court and jury upon the solid foundation of right and justice. Instead of citing a great number of alleged similar cases, and spending their time in long arguments to show the analogy between them and the one at bar, they would apply to the transaction in controversy the test of reason and appeal to that faculty by which we distinguished truth from falsehood and right from wrong.

Why is it that the people at large, the unlearned as well as the learned, so uniformly observe the law—follow its mandates in the indefinitely varying circumstances of life? Why is it that they are held bound to know the law? Is it not because they know the difference between the true and the false—between right and wrong—between justice and injustice—between law and the violation of law?

The lawyer of central Illinois who "traveled the circuit" sixty years ago, did not carry with him, and could not cite an array of authorities in support of the points he made, but he had to win, if at all, by his ability to marshal the facts in evidence and by his power of reasoning to carry conviction of the righteousness of his client's cause. The school of law in which Abraham Lincoln, John T. Stuart, Leonard Swett and Lawrence Weldon were trained, was a school not merely of oratory, but also of logic and legal ethics.

But it must not be inferred that Lincoln never consulted authorities. Although he was on the circuit a large portion of the year, he had access at Springfield, his home, to the state law library—to the English, the federal and the state reports. And whenever any of the hundreds of cases, in the trial of which he had taken part on the circuit, were taken to the supreme court of the state, he would re-inforce himself with all the authorities he could find in the books. In this way he was doubly armed for the final contest. He had his forces well in hand, with principles in the fore-front of the battle and precedents for their support.

Mr. Lincoln was admitted to the bar in 1837. The Illinois reports show that in the twenty-three years of his practice of law, he argued 173 cases in the supreme court of the state. He also had a large practice in the United States district and circuit courts at Springfield and Chicago.

The best description of Mr. Lincoln as a lawyer that I have ever read was that of Thomas Drummond, who was judge of the United States district court of Illinois as early as 1850, and subsequently became judge of the United States circuit court for this—the Seventh judicial district, comprising the states of Illinois, Indiana and Wisconsin. Judge Drummond gives this characterization of Mr. Lincoln as a lawyer:

"Without any of the personal graces of the orator; without much in the outer man indicating superiority of intellect; without great quickness of perception, still, his mind was so vigorous, his comprehension so exact and clear, and his judgment so sure that he easily mastered the intricacies of his profession and became one of the ablest reasoners and most impressive speakers at our bar. With a probity of character known by all; with an intuitive insight into the human heart; with a clearness of statement which was itself an argument; with uncommon power and felicity of illustration—often, it is true, of a plain and homely kind—and with that sincerity and earnestness of manner which carried conviction, he was perhaps one of the most successful lawyers we have ever had in the state."

This is a true picture of Lincoln, the lawyer. No one who has ever seen and heard him at the bar can fail to recognize the likeness.

R. M. BENJAMIN.

Bloomington, Ill.

NEWS ITEM.

CODE OF ETHICS FOR LAYMEN.

A code of ethics for laymen will be reported to the Illinois State Bar Association at its annual meeting in Peoria next June, by Elmer E. Rogers, chairman of the committee on professional ethics. Among other things the report will say:

"Probably the first duty of the citizen is obedience to law, which is none the less a moral, civic, and political duty as well as an ethical duty. If a law be unjust, then it is the ethical duty of the citizen, through the ballot box, to elect representatives who will repeal the offensive statute.

"Respect for the courts and their executive officers, while in performance of their duties, is an ethical duty incumbent upon every citizen. If any public official be derelict in performance of his sworn duty then the citizen should perform his ethical, civic, and political duty at the ballot box. It is wholly unethical and unwarranted to hold in contempt the office merely because of distrust for the man who happens to occupy that office."

HUMOR OF THE LAW.

A buxom young woman of some twenty summers came into my office the other day, relates one of our corespondents, to see me in regard to securing for her a divorce. We talked over the case, and I advised her that we would probably have no difficulty in securing the decree on the grounds of non-support, and that it was likely to be a default case.

She then asked me our fee and I told her it would cost her $40.

"Well," she said, "mother has gotten three divorces and I have gotten two for $25 each, and that is all I'm going to pay for this one."

"You are charged with stealing nine of Colonel Henry's hens last night. Have you any witnesses?" asked the Justice sternly.

"Nussah!" said Brother Jones humbly. "I 'specks I'se sawtuh peculiar dat-uh-way, but it ain't never been mah custom to take witnesses along when I goes out chicken-stealin', suh."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Acknowledgment**—Defects.—A deed of a man and wife defectively acknowledged held good as between the parties, and with the grantee's possession was notice to the world of his ownership.—Burton-Whayne Co. v. Farmers' & Drovers' Bank, Ky., 113 S. W. 445.

2. **Adverse Possession**—What Constitutes.—Where one enters into possession with the consent of the owner under the expectation that a conveyance will be made, the holding is not adverse without notice to the owner.—Robinson v. Huffman, Ky., 113 S. W. 458.

3.——What Constitutes.—The ordinary use and the taking of ordinary profits of land will suffice to constitute adverse possession, without actual fencing of the tract.—Wallace v. Sache, Minn., 118 N. W. 360.

4.——When Initiated.—Limitations could not commence to run against a city in favor of a claimant of land in streets until the streets were laid off or dedicated to public use.—Perry v. Ball, Tex., 113 S. W. 588.

5. **Appeal and Error**—Grounds of Review.—Where a party tries a case on the theory that a certain issue is a question for the jury, the verdict is conclusive on appeal.—Grimes v. Cole, Mo., 113 S. W. 685.

6. **Assignments**—Interest Assignable.—Assignments of contingent and expectant interests are recognized in equity.—Bigelow v. Old Dominion Copper Mining & Smelting Co., N. J., 71 Atl. 153.

7. **Attachment**—Bond to Discharge.—A court has power to enter judgment against a surety without notice, where he has by his bond on record consented that judgment should be so entered.—Fred Andres & Co. v. Schlueter, Iowa, 118 N. W. 429.

8. **Attorney and Client**—Authority of Attorney.—A defendant in partition, relying on title by adverse possession, cannot defeat a recovery by plaintiffs by showing that the suit was brought by an attorney without authority.—Hess v. Webb, Tex., 113 S. W. 618.

9. **Bankruptcy**—Claim of Landlord for Rent.—Where a bankrupt lessee at the time of its bankruptcy was in default for rent by reason of which fact the rent for the entire term was due and payable under the terms of the lease, such rent, so far as it was definitely fixed by the lease, was a fixed liability, absolutely owing and provable in bankruptcy, but claims for taxes and insurance premiums on the property which the lessee also covenanted to pay as a part of the rent, but which were not due at the time of the bankruptcy, nor the amount then capable of ascertainment, are not so provable.—In re Pittsburg Drug Co., U. S. D. C., W. D. Pa., 164 Fed. 482.

10.——Corporations.—Where a corporation, being insolvent, commits acts of bankruptcy by preferring certain creditors, the jurisdiction of a court of bankruptcy to adjudicate it a bankrupt and administer its estate under the provisions of the bankruptcy act, attaches, and the corporation cannot avoid such jurisdiction and validate its preferences by instituting proceedings for dissolution in a state court before bankruptcy proceedings against it are instituted.—In re Adams & Hoyt Co., U. S. D. C., N. D. Ga., 164 Fed. 489.

11.——Debts Entitled to Priority.—Musicians, employed at regular wages to play in a theater or other place, are "servants," within the meaning of Bankr. Act, c. 541, sec. 64b (4), and entitled to priority of payment from the estate of the employer in bankruptcy for their wages earned within three months.—In re Caldwell, U. S. D. C., E. D. Ark., 164 Fed. 515.

12.——Election of Trustee.—The election of a trustee for a bankrupt vacated, and a new meeting ordered, where no notice of the meeting was given to one claiming to be a creditor, and who, as had previously been expressly determined by the court, was entitled to be treated as a creditor, the same as others claiming to be creditors, until the validity of his claim should be duly passed on.—In re Evening Standard Pub. Co., U. S. D. C., N. D. N. Y., 164 Fed. 517.

13.——Exemptions.—General orders in bankruptcy No. 17, authorizing creditors to except to the allowance of the bankrupt's exemptions, does not exclude the trustee, who may except on behalf of all of the creditors to such allowance on the ground of the bankrupt's fraud.—In re Rice, U. S. D. C., E. D. Pa., 164 Fed. 589.

14.——Failure to Account for Property.—Where a bankrupt fails to schedule or to surrender to his trustee goods shown to have been in his possession a short time prior to his bankruptcy, the burden rests upon him to account for the same, and, if he fails to do so, the presumption is that he sold them and conceals the

proceeds.—Seigel v. Cartel, U. S. C. C. of App., Eighth Circuit, 164 Fed. 691.

15.——Failure to File Schedule.—An involuntary bankrupt is subject to punishment for contempt of court for a failure to file his schedules within ten days after the adjudication, as required by Bankr. Act, c. 541, sec. 7, and by the order of adjudication.—In re Schulman & Goldstein, U. S. D. C., S. D. N. Y., 164 Fed. 440.

16.——General Assignment.—Where a debtor in Kansas made a general assignment and was subsequently adjudicated a bankrupt, the trustee was subrogated to the right of the assignee under the state law to property held by the bankrupt under an unrecorded contract of conditional sale, as against the seller.—In re Fish Bros. Wagon Co., U. S. C. C. of App., Eighth Circuit, 164 Fed. 553.

17.——Involuntary Proceedings. — Under Const. Cal. art. 12, sec. 3, the liability of a director in an insolvent savings bank incorporated under the laws of the state whose funds have been embezzled or misappropriated by its officers to depositors in such bank is a fixed liability absolutely owing within Bankr. Act, c. 541, sec. 63a (1), and such depositors are creditors who may join in a petition in involuntary bankruptcy against a director.—In re Brown, U. S. C. C. of App., Ninth Circuit, 164 Fed. 673.

18.——Involuntary Proceedings.—A petition in involuntary bankruptcy in which a corporation and a partnership join may be verified for the corporation by its president and for the partnership by one of its members.—Walker v. Woodside, U. S. C. C. of App., Ninth Circuit, 164 Fed. 680.

19.——Order to Turn Over Property.—An order requiring a bankrupt to turn over money or property to his trustee should be made only after a hearing on a partition therefor, making definite averments on the subject and offering a definite issue, upon which both parties may adduce evidence.—In re Ruos, U. S. D. C., E. D. Pa., 164 Fed. 749.

20.——Preferences.—A creditor of a bankrupt, who received a preference, held not chargeable with knowledge of facts which gave him reasonable cause to believe the debtor insolvent, so as to render the preference voidable.—In re Wolf Co., U. S. D. C., M. D. Pa., 164 Fed. 448.

21.——Pretended Sale by Bankrupt.—A pretended sale of goods by a bankrupt a few days prior to his bankruptcy held fraudulent, and void, and to convey no title as against creditors, but merely a device to apparently transfer the title while the ownership of the goods in fact remained in the bankrupt.—In re Siegel, U. S. D. C., E. D. N. Y., 164 Fed. 559.

22.——Proceedings Against Corporation.—A corporation may be adjudged an involuntary bankrupt, where the petition alleges sufficient grounds, notwithstanding the fact that a receiver was appointed for its property by a state court more than four months prior to the filing of the petition, who is still in possession.—In re Sterlingworth Ry. Supply Co., U. S. D. C., E. D. Pa., 164 Fed. 591.

23.——Proceedings by Trustee.—A petition by trustees in bankruptcy against sureties on a bail bond given by the bankrupt, to recover a deposit made with them as security, held not within the jurisdiction of the district court without the defendants' consent.—In re Horgan, U. S. C. C. of App., First Circuit, 164 Fed. 415.

24.——Provable Claims.—Payments made to a creditor by a partnership within a few days prior to its bankruptcy held, under the evidence to constitute voidable preferences, which the creditor was required to repay before proving a claim against the estate.—In re Rice, U. S. D. C., E. D. Pa., 164 Fed. 514.

25. **Banks and Banking**—Stockholders Liability.—Counsel fees and expenses of receiver, in a suit by creditors against an insolvent bank, held part of stockholders' liability for deficit, but not so as to fees allowed for counsel of plaintiff in such suit.—Buist v. Williams, S. C., 62 S. E. 859.

26. **Bills and Notes**—Accommodation Maker. —The maker of an accommodation paper is as to the party accommodated and other holders with notice merely a surety, and, as to other holders of the paper, his liability is in general that of a similar party, maker, acceptor, or indorser.—Morehead v. Citizens' Deposit Bank, Ky., 113 S. W. 501.

27.——Forged Indorsement.—A bank, which indorsed a check of another bank, the indorsement of which by the payee was forged, expressly guaranteeing the indorsements, and received payment thereof, held liable to the bank which paid it in reliance on such guaranty.—Boardman v. Hanna, U. S. C. C., S. D. N. Y., 164 Fed. 527.

28. **Carriers**—Carriage of Goods.—A refusal to deliver cars of cotton seed upon a warehouse side track as was done for other consignees held a violation of rule 36 of the Railroad Commission of Georgia.—Augusta Brokerage Co. v. Central of Georgia Ry. Co., Ga., 62 S. E. 996.

29.——Injury to Passenger.—Whether a motorman was negligent in running his car which collided with a wagon, injuring a passenger, when the wheels of the wagon attempting to leave the track skidded, held a question for the jury.—Brackney v. Public Service Corp., N. J., 71 Atl. 149.

30. **Champerty and Maintenance**—Transfer of Claims.—Agreement among stockholders to aid their company in its litigations against third parties, even if contrary to public policy, held not to operate to discharge third parties from their existing liability to the company.—Bigelow v. Old Dominion Copper Mining & Smelting Co., N. J., 71 Atl. 153.

31. **Chattel Mortgages**—Foreclosure.—In fore-

closure of a chattel mortgage, where it is impossible to reach the property to satisfy the debt, the court may decree a personal judgment against defendant without foreclosure.—McDaniel v. Staples, Tex., 113 S. W. 596.

32. **Conspiracy**—Joint Liability.—If defendants conspired together to injure plaintiff's business and wrongfully deprived him of the use of a trade-name, each of the defendants would be responsible for the wrongful acts of the other.—Solar Baking Powder Co. v. Royal Baking Powder Co., 112 N. Y. Supp. 1013.

33. **Constitutional Law**—Disposition of Public Funds.—The legislature may permit the deposit of county funds in banks, and absolve county officers from any liability on account of such deposits.—McSurely v. McGrew, Iowa, 118 N. W. 415.

34.——Special Charters.—The legislature can authorize a city council by special charter to prescribe saloon limits, and such an act is not unconstitutional as a delegation of its power to suspend a general law.—Andreas v. City of Beaumont, Tex., 113 S. W. 614.

35. **Contribution**—Joint Wrongdoers.—Promoter who had been held answerable in solido for secret profit gained by himself and fellow promoter held not entitled to contribution from the estate of his fellow promoter.—Bigelow v. Old Dominion Copper Mining & Smelting Co., N. J., 71 Atl. 153.

36. **Conversion**—Time of Taking Place.—Where testator directed his executors to sell real estate, there was an equitable conversion which took place at the death of testator, so that the beneficiaries took the proceeds as personalty.—Haywood v. Wachovia Loan & Trust Co., N. C., 62 S. E. 915.

37. **Corporations**—Debts.—A corporation purchasing the assets of a selling corporation held to take the property subject to an equitable lien in favor of the creditors of the selling corporation.—Luedecke v. Des Moines Cabinet Co., Iowa, 118 N. W. 456.

38.——Secret Profits.—Liability of a promoter to a corporation organized in New Jersey for undisclosed profits held not required to be determined by the law of that state rather than the law of the state where the transaction occurred or the action is brought.—Bigelow v. Old Dominion Copper Mining & Smelting Co., N. J., 71 Atl. 153.

39. **Courts**—Jurisdiction.—There being no suggestion that the court of another state had not complete jurisdiction over complainant's person and the subject-matter, complainant's plain remedy held to be to prosecute an appeal in that state, and not by bill in this state.—Bigelow v. Old Dominion Copper Mining & Smelting Co., N. J., 71 Atl. 153.

40. **Criminal Evidence**—Res Gestae.—Where the breaking up of a dance caused the difficulty leading to an assault by defendant, evidence that he broke up the dance was admissible as part of the res gestae.—Thompson v. State, Tex., 113 S. W. 536.

41. **Customs and Usages**—Evidence.—A single act or transaction held not to warrant an inference that such act or transaction was customary.—Jones v. Herrick, Iowa, 118 N. W. 444.

42. **Customs Duties**—Smuggling.—To constitute the offense of smuggling, there must be a secret introduction of dutiable goods with intent to defraud the government.—San Antonio Light Pub. Co. v. Lewy, Tex., 113 S. W. 574.

43. **Damages**—Breach of Contract.—Where plaintiff was delayed in setting piling by defendant's delay in furnishing the piles and was prevented from setting them on another portion he was entitled to recover for lost profits as to the latter and for lost time and expense as to the former.—Williams, Kohler & Barrier v. Yates, Ky., 113 S. W. 503.

44.——Expenses Incurred.—Where the owner of property, injured by the negligence of another, incurs proper expense to minimize the damage, the wrongdoer is liable therefor, though the effort to reduce the loss was unsuccessful.—Sullivan v. City of Anderson, S. C., 62 S. E. 862.

45.——Loss of Earnings.—Loss of earnings are special damages which must be specially pleaded and proved, in order to be recoverable in an action for personal injuries.—Cole v. Metropolitan St. Ry. Co., Mo., 113 S. W. 684.

46.——Personal Injuries.—Damages for negligent personal injury include actual expense for nursing, medical services, also loss of time and earning capacity, and mental and physical suffering.—Rushing v. Seaboard Air Line Ry. Co., N. C., 62 S. E. 890.

47. **Dedication**—Lands Dedicated to Public Use.—Land having been dedicated for school and other purposes, complainants, though with the consent of the trustees of the school district and of the original owner's heirs, held not authorized to remove the schoolhouse from the tract to other land held by complainants, though in trust for school purposes.—Sanders v. Cauley, Tex., 113 S. W. 560.

48. **Deeds**—Curative Statutes.—The legislature cannot validate a deed of an individual which was absolutely void from its inception.—Klumpp v. Stanley, Tex., 113 S. W. 602.

49.——Habendum Clause.—While the habendum of a deed cannot introduce one who is a stranger to the premises to take as grantee, one not named in the premises may take an estate in remainder by limitation in the habendum, where that appears to be the intention of the parties gleaned from the deed as a whole.—Condor v. Secrest, N. C. 62 S. E. 921.

50. **Descent and Distribution**—Advancements.—A conveyance from parent to child without consideration, or where the difference between the price paid and the actual value is great, will be presumed to be an advancement.—Mossestad v. Gunderson, Iowa, 118 N. W. 374.

51.——Conveyance by Heir.—Where an heir conveyed his own interest as heir of the deceased ancestor, and his interest as heir of a deceased heir without other heirs than the heirs of the deceased ancestor, the grantee acquired the entire interest of such heir.—Hess v. Webb, Tex., 113 S. W. 618.

52. **Equity**—Injunction.—Complainants, having illegally removed a schoolhouse from land dedicated for school purposes, held not entitled to an injunction to restrain defendants from removing the house from the place complainants had located it.—Sanders v. Cauley, Tex., 113 S. W. 560.

53.——Parties.—There is a distinction between necessary and indispensable parties, to ascertain whether some of those, who under the rules of equity pleading and practice were deemed necessary, may not be dispensed with as parties, that equitable relief in a given case may not wholly fail.—Mathieson v. Craven, U. S. C. C., D. Del., 164 Fed. 471.

54. **Evidence**—Speed of Street Cars.—A person who is not an expert, but who shows some

qualifications to speak on the subject, may testify as to the speed of street cars.—Kern v. Des Moines City Ry. Co., Iowa, 118 N. W. 451.

55.——Written Instruments.—Where a written contract with a carrier for shipment of stock was silent as to the route, parol evidence as to a separate agreement for a particular route was not incompetent as contradicting or varying the written contract.—Davis Bros. v. Blue Ridge Ry. Co., S. C., 62 S. E. 856.

56. **Exceptions, Bill of**—Time for Filing.—An order, extending the time for filing the bill of exceptions until the succeeding term, was ineffective to require the filing before the determination of a motion for a new trial.—Akins v. City of Humansville, Mo., 113 S. W. 687.

57. **Executors and Administrators**—Allowance to Widow.—Where a caveat was interposed by heirs at law, not including the widow, and a year's support was set apart to her, and by reason of the appeal the estate was kept together for longer than twelve months, under Civ. Code 1895, sec. 3466, the widow, was entitled to have a second year's support assigned to her.—Edenfield v. Edenfield, Ga., 62 S. E. 980.

58. **Federal Courts**—Commencement of Action.—The commencement of a suit in equity in a federal court is not governed by the local statute for the commencement of actions in the state courts, but by the equity practice and procedure.—United States v. Miller, U. S. C. C., D. Oreg., 164 Fed. 444.

59. **Fire Insurance**—Insurance on Liquors.—A policy on a drug stock containing a quantity of intoxicating liquors was invalid only in case plaintiff, when he procured the policy, intended to conduct an unlawful business and sell the liquor contrary to law.—Kellogg v. German American Ins. Co., Mo., 113 S. W. 663.

60.——Loss by Lightning.—Under a policy insuring against fire, insured held not entitled to recover for damage by lightning which knocked the property down, but did not burn it.—Sleet v. Farmers' Mut. Fire Ins. Co. of Boone County, Ky., 113 S. W. 515.

61.——Meaning of Words Used.—Words used in a policy of insurance should be given their common, ordinary meaning rather than that of the lexicographers or of those skilled in the niceties of language.—Williamsburgh City Fire Ins. Co. of Brooklyn v. Willard, U. S. C. C. of App., Ninth Circuit, 164 Fed. 404.

62. **Fraud**—Misrepresentations.—A vendee's failure to procure information which ordinary prudence would dictate held insufficient to defeat a recovery for the vendor's misrepresentations on which the vendee relied.—Hetland v. Bilstad, Iowa, 118 N. W. 422.

63. **Frauds, Statute of**—Parol Evidence.—In an action on a written contract, a plea setting up that plaintiff, after its execution, agreed to accept another as purchaser of the land in question in place of defendant, is bad, where the alleged agreement was by parol.—Reams v. Thompson, Ga., 62 S. E. 1014.

64. **Gifts**—Causa Mortis.—That several months before dying decedent gave notes to defendant excludes the idea of a gift causa mortis.—Stark v. Kelley, Ky., 113 S. W. 498.

65. **Guardian and Ward**—Deposit of Funds in Bank.—A guardian is permitted to leave the funds of his ward temporarily on deposit in a reputable bank, pending investment or other disposition of the same; but he is personally liable for a loss of funds deposited with a bank for a fixed period of time on a certificate of deposit without security.—Corcoran v. Kostrometinoff, U. S. C. C. of App., Ninth Circuit, 164 Fed. 685.

66.——Letters of Guardianship.—Letters of guardianship of the person of a child, issued to parties entitled to his control in his domicile of origin, must control, over letters to a parent in a different domicile.—Smidt v. Benenga, Iowa, 118 N. W. 439.

67. **Habeas Corpus**—Qualifications of Grand Jurors.—Questions as to the qualifications of grand jurors cannot after conviction be raised collaterally by habeas corpus.—Keizo v. Henry, U. S. S. C., 29 Sup. Ct. 41.

68. **Highways**—Prescription.—The use by the public, without objection, of an uninclosed portion of a railway's right-of-way in a manner that did not interfere with its use by the railroad did not make the way so used a public highway by prescription.—Heilbron v. St. Louis Southwestern Ry. Co. of Texas, Tex., 113 S. W. 610.

69. **Homicide**—Manslaughter.—Where the jury in convicting of manslaughter assessed the lowest punishment, all errors in the charge were eliminated, unless the charge on manslaughter induced the jury not to acquit on the ground of self-defense.—Pannell v. State, Tex., 113 S. W. 536.

70.——Manslaughter.—Where defendant, after he had been assaulted, went to his home three and a half blocks away, and procured a shotgun, and shot the person who had assaulted him, it was not error to refuse to submit the question of manslaughter.—State v. Towers, Minn., 118 N. W. 361.

71.——Self-Defense.—That accused had been criminally intimate with the wife of decedent prior to the homicide did not deprive him of the right of self-defense.—Pannell v. State, Tex., 113 S. W. 536.

72. **Husband and Wife**—Connivance at Debauchery.—A husband is not precluded from recovering damages for the debauchment of his wife by the fact that he saw her meet defendant at night, and might have prevented the injury complained of, unless he connived at it.—Woldson v. Larson, U. S. C. C. of App., Ninth Circuit, 164 Fed. 548.

73. **Injunction**—Cleaning Out Stream.—Making an injunction against the use of a stream conditional on plaintiff consenting that defendant may clean out the stream held not to require defendant to clean it out.—Mason v. Apalache Mills, S. C., 62 S. E. 871.

74.——Flooding Lands.—Including the land of another in a reservoir basin and flooding the same constitutes a permanent obstruction to its use by the owner, which entitles him to an injunction.—United States v. Rickey Land & Cattle Co., U. S. C. C., N. D. Cal., 164 Fed. 496.

75. **Internal Revenue**—Excise Commissioner.—A person appointed to succeed himself as an excise commissioner, who fails to qualify within ten days after his appointment, as required by statute, acquires no title to the office as against one who is appointed to fill the vacancy.—Anderson v. Myers, N. J., 71 Atl. 139.

76. **Intoxicating Liquors**—Liquor Dealer's Bond.—In an action on a retail liquor dealer's bond, held no defense that notices to other liquor dealers than defendant not to sell to plaintiff's husband had been revoked.—Farenthold v. Tell, Tex., 113 S. W. 635.

77.——Ordinance Fixing Saloon Limits.—A city ordinance fixing saloon limits held not void for unreasonable discrimination.—Andreas v. City of Beaumont, Tex., 113 S. W. 614.

78. **Landlord and Tenant**—Dangerous Condition of Premises.—A landlord held not liable for injuries to his tenant's children by falling through a chute in the unoccupied part of the loft in which the leased rooms were situated; the child having a mere license to play in that part of the loft.—Marchek v. Klute, Mo., 113 S. W. 654.

79.——Injuries to Tenant.—A landlord is not relieved of liability for injury to his tenant in consequence of the premises being unsafe by the fact that he employed an independent contractor.—Doyle v. Franek, Neb., 118 N. W. 468.

80. **Libel and Slander**—Privileged Communications.—Unless newspaper comments on official proceedings are fair and impartial they are not privileged, and, if untrue, the fact that such proceedings are matters of public concern will not render the comments privileged.—San Antonio Light Pub. Co. v. Lewy, Tex., 113 S. W. 574.

81. **Life Insurance**—Warranties.—A life policy construed and held, that it was the fact of the sound health of insured, which determined the liability of defendant and not his apparent health or any one's opinion that he was in sound health.—Murphy v. Metropolitan Life Ins. Co., Minn., 118 N. W. 355.

82. **Logs and Logging**—Sale of Standing Timber.—A sale of standing timber, fixing no time for the removal thereof, passes an equitable interest in the real estate.—McCoy v. Fraley, Ky., 113 S. W. 444.

83. **Mandamus**—Scope of Remedy.—Mandamus is an appropriate remedy to compel a public service water company to supply its customers with water, on compliance with its reasonable rules and regulations.—Poole v. Paris Mountain Water Works Co., S. C., 62 S. E. 874.

84. **Master and Servant**—Dangerous Occupations.—Management of freight elevator held a "dangerous occupation," within the meaning of Pub. Acts 1901, p. 157, No. 113, sec. 3.—Braasch v. Michigan Stove Co., Mich., 118 N. W. 366.

85.——Defective Appliances.—A master held liable for injuries to a servant resulting from the breaking of a skid formed of defective planks selected by the master's superintendent.—Heck v. International Smokeless Powder Co., N. J., 71 Atl. 150.

86.——Fellow-Servants.—The common-law rule exempting a master from liability for injuries to his servant by a fellow-servant's negligence, prevailing at the place where the injury occurred and the cause of actions arose, governs, though the rule has been changed by statute at the forum.—Louisville & N. R. Co. v. Keiffer, Ky., 113 S. W. 433.

87.——Safe Place to Work.—The law imposes upon a mine owner the duty of exercising reasonable care to see that the mine is in a reasonably safe condition for an employee to work therein and does not require the employee to exercise care to discover its condition before going to his work.—Bolen-Darnall Coal Co. v. Williams, U. S. C. C. of App., Eighth Circuit, 164 Fed. 665.

88.——Safe Place to Work.—If an employee was required to go beneath a hoist in order to aid in starting the belt by which it was run, he could assume that the machinery was so constructed that it was a reasonably safe place in which to work.—Jones v. Herrick, Iowa, 118 N. W. 444.

89. **Mines and Minerals**—Liability of Retiring Partner.—A member of a mining partnership who sells his interest, is liable for the subsequent wages of employees who remain in the employment of the partnership after the sale, without knowledge thereof, but not if they have knowledge of the change.—Kelley v. McNamee, U. S. C. C. of App., Ninth Circuit, 164 Fed. 369.

90. **Mortgages**—Vendor's Heirs.—A conveyance by vendor's heirs retaining a vendor's lien held to vest a superior title to that acquired under foreclosure of a deed of trust executed by the vendee.—Wm. D. Cleveland & Sons v. Smith, Tex., 113 S. W. 547.

91. **Municipal Corporations**—Defective Streets.—While a city is not liable for injury resulting from a danger inherent in the plan adopted respecting its streets and cross-walks, it is liable for negligent construction or maintenance under the plan.—Gallagher v. City of Tipton, Mo., 113 S. W. 674.

92.——Legislative Control.—Under the guise of legislative control of municipal corporations, a private citizen cannot be deprived by an act of the legislature, of any of his rights against a municipal corporation.—McSurely v. McGrew, Iowa, 118 N. W. 415.

93.——Nuisances.—The authority given trustees of towns and villages to open and improve streets and alleys and to regulate livery, sale, and feed stables does not vest in the trustees the right to maintain obstructions or to suffer such nuisances to be maintained by private persons.—State v. Franklin, Mo., 113 S. W. 652.

94.——Streets.—The general rule that a city cannot maintain, nor permit, obstructions in a street, does not apply to permanent obstructions incident to public necessities, such as telegraph or telephone poles, supports for viaducts, etc.—Atchison v. City of St. Joseph, Mo., 113 S. W. 679.

95.——Taxation of Vessels.—A city has no jurisdiction to assess for taxation vessels which have acquired an actual situs at another place, although enrolled in the United States customhouse in such city.—City of Galveston v. J. M. Guffey, Petroleum Co., Tex., 113 S. W. 585.

96. **Navigable Waters**—Damages for Obstruction.—One obstructing navigable waters by storing logs therein is liable for reasonable damages.—Orange Lumber Co. v. Thompson, Tex., 113 S. W. 563.

97. **Negligence**—Humanitarian Doctrine.—The negligence of a person injured in a collision with a street car held not to defeat a recovery on the ground of the failure of the motorman to perform his humanitarian duty.—Cole v. Metropolitan St. Ry. Co., Mo., 113 S. W. 684.

98. **Parent and Child**—Custody of Children.—While the unfitness which deprives a parent of his natural right to the custody of his children must be positive, the degree thereof must be considered in connection with the attending circumstances.—Ex parte Clarke, Neb., 118 N. W. 472.

99. **Pledges**—Renewal of Note.—The general doctrine is that the renewal of a note secured by collateral security does not release the collateral.—Morehead v. Citizens' Deposit Bank, Ky., 113 S. W. 501.

100. **Principal and Agent**—Secret Profits.—An agent cannot secretly use the subject-matter of the agency so as to make personal profits, and is bound to account to his principal for

profits received in unauthorized transactions. though he has accounted for the full price for which he was authorized to sell.—Merrill v. Sax, Iowa, 118 N. W. 434.

101. **Railroads**—Destination of Passenger.—A passenger car conductor in failing to transfer a passenger to her proper car at a junction held the agent of the railroad over whose lines she was transported, so that it alone was liable for the damages sustained.—Cincinnati, N. O. & T. P. Ry. Co. v. Raine, Ky., 113 S. W. 495.

102.——Injuries to Stockmen.—A stockman struck by an engine on a passing track as he was inspecting his stock held not negligent as a matter of law because he did not constantly look out for danger or look a second time while walking two car lengths.—Christiansen v. Illinois Cent. R. Co., Iowa, 118 N. W. 387.

103.——Injury to Person on Track.—A person at a place within private grounds of a railroad, which had been habitually used by the public generally for many years, is a licensee, and not a trespasser.—Burton's Adm'r. v. Cincinnati, N. O. & T. P. Ry. Co., Ky., 113 S. W. 442.

104. **Removal of Causes**—Suit by Alien Against Non-resident.—An action brought by a nonresident alien in a state court against a citizen of another state is removable by the defendant where the requisite amount is involved.—Barlow v. Chicago & N. W. Ry. Co., U. S. C. C., N. D. Iowa, 164 Fed. 765.

105. **Sales**—False Representations.—Where the seller by making false representations as to a material matter effects a sale, it is immaterial that he did not know it was false.—Ross-Armstrong Co. v. Shaw, Tex., 113 S. W. 558.

106. **Schools and School Districts**—Taxation.—Where a tax levied by a school district was illegal because excessive, bonds proposed to be issued upon such illegal levy will be enjoined.—Snyder v. Baird Independent School Dist., Tex., 113 S. W. 521.

107. **States**—Appropriation of Public Moneys.—The legislature is not confined, in its appropriation of public moneys, or of the sums to be raised by taxation in favor of individuals, to cases of legal demands against the state, but may recognize claims founded in justice and equity.—McSurely v. McGrew, Iowa, 118 N. W. 415.

108.——Boundaries.—The middle of the north ship channel of the Columbia River, described as a boundary between Oregon and Washington in Act Feb. 14, 1859, c. 33, 11 Stat. 383, admitting Oregon into the Union, remains the boundary subject to changes in it which come by accretion.—State of Washington v. State of Oregon, U. S. S. C., 29 Sup. Ct. 47.

109. **Street Railroads**—Care as to Pedestrians.—A pedestrian crossing a street car track in front of an approaching car is justified in believing that the car will not come at a greater rate of speed than the maximum fixed by the municipal ordinance.—Kern v. Des Moines City Ry. Co., Iowa, 118 N. W. 451.

110.——Injury to Passenger.—The sudden starting of a street car with a jerk sufficient to throw to the ground a passenger held to justify an inference of negligence.—Paducah Traction Co. v. Baker, Ky., 113 S. W. 449.

111.——Persons Crossing Tracks.—Where a street railway company had provided a bench for waiting passengers, its operators were bound to regard the act of a prospective passenger crossing from one corner to the other as a signal to stop that he might take passage.—San Antonio Traction Co. v. Levyson, Tex., 113 S. W. 569.

112. **Taxation**—Federal Agencies.—Provisions of railway charter held not to exempt a railroad from franchise tax though when the charter was granted real and personal property were, under Haw. Rev. Laws 1905, sec. 1216, assessed for taxation separately as to each item, thereof for its full value.—Honolulu Rapid Transit & Land Co. v. Wilder, U. S. S. C., 29 Sup. Ct. 44.

113.——Powers of Legislature.—It is within the power of the legislature of a state to provide for the assessment and taxation for past years of property which has escaped taxation for such years.—Jackson Lumber Co. v. McCrimmon, U. S. C. C., N. D. Fla., 164 Fed. 759.

114.——Tax Sale.—The failure of the holder of a tax title to serve notice of the expiration of redemption on one who, through another, had cropped the land, avoided the notice.—Wallace v. Sache, Minn., 118 N. W. 360.

115. **Tenancy in Common**—Adverse Possession.—A purchaser of an interest of an heir in a tract of land of a deceased ancestor held not to hold the possession adversely to the other heirs, unless notice was brought home that he claimed the entire tract.—Hess v. Webb, Tex., 113 S. W. 618.

116. **Trover and Conversion**—Property Taken From Prisoner.—A sheriff, who takes from a prisoner property rightfully belonging to him and surrenders it to another, in disregard of the prisoner's rights and in recognition of an adverse claim asserted by another, is guilty of a conversion, and liable in trover without demand for its return.—Bell v. Carter, U. S. C. C. of App., Eighth Circuit, 164 Fed. 417.

117. **Trusts**—Cotton Rents.—Charging a trust with the value of cotton rents at time of sale of cotton, instead of when it was received, held not ground for reversal, in the absence of a showing of difference in values at such times.—Cunningham v. Cunningham, S. C., 62 S. E. 845.

118.——Resulting Trusts.—A vendor in an executory contract for the sale of land, who receives the price, holds the legal title in trust for the purchaser, and on his death the legal title descends to his heir for the benefit of the purchaser.—Atteberry v. Burnett, Tex., 113 S. W. 526.

119. **Waters and Water Courses**—Diversion.—A landowner cannot so divert a stream, though the change be made altogether on his own land, as to cause the stream to overflow onto the land of a lower proprietor.—Wood v. Craig, Mo., 113 S. W. 676.

120.——Municipal Supply.—An ordinance fixing water rates held to require the consumer to pay meter rates, provided the amount exceeded $12 per annum, though it was more than the maximum flat rate specified for the service rendered.—Charleston Light & Water Co. v. Lloyd Laundry & Shirt Mfg. Co., S. C., 62 S. E. 873.

121. **Wills**—Rights of Creditors.—A creditor of a legatee held to have properly proceeded in equity to subject a charge imposed on the property devised to other legatees to the payment of his claim.—Merchants' Nat. Bank v. Crist, Iowa, 118 N. W. 394.

122. **Witnesses**—Transactions With Deceased Persons.—The waiver by an administrator of the incompetency of a claimant to testify as to his claim held to bind the administrator on appeal to the county court.—Cowles v. Cowles' Adm'r., Vt., 71 Atl. 191.